IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7431 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUNAVARKHAN RASULKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7431 of 2001

MR KANUBHAI I PATEL for Petitioner No. 1

Mr.P.D.Bhate, learned A.G.P. for Respondent No. 1

RULE SERVED BY DS for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/08/2004

ORAL JUDGEMENT

#. The petitioner, by way of this petition, has

challenged the orders of the Additional Director General of Police (Administration), Gujarat State dated 31.01.2001 and 17.07.2001, by which the application of the petitioner for compassionate appointment has been rejected on the ground that his father had married for the second time without prior permission of the department.

#. It is not in dispute that the father of the petitioner had expired while he was in service on 19.02.1997 who was working as Constable with the Police Department i.e. respondent no.3. The petitioner has agreed that the father of the petitioner had married for the second time and the averments to that effect have been made in para 3 of the petition.

#. Though the matter was admitted on 07.09.2001 and adjourned from time to time, no reply has been filed by respondents.

#. The reason given by the respondent for not considering the case of the petitioner is that the father of the petitioner has married twice. It is not in dispute that while applying for the appointment on the compassionate ground, the first wife has given no objection certificate on 07.09.1998.

#. In the facts and circumstances of the case, I am of the opinion that the stand taken by the respondent is not just and proper in view of the fact that atleast one of the legal heirs of the deceased employee is entitled for consideration of compassionate appointment under the rules. Merely because the father of the petitioner had not informed the department, it cannot be said that one of the legal heirs of the deceased is not entitled for consideration of compassionate appointment. In that view of the matter, respondents are directed to reconsider the case of the petitioner on merits and shall decide the same within three months from the date of receipt of the order or the certified copy of this order, whichever is earlier.

#. Subject to what is stated above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.S.Jhaveri, J)

(pathan)